Reg. No. KRNA—25.

Karnataka Gazette

PUBLISHED BY AUTHORITY

(EXTRAORDINARY)

PART IV 2-B

BANGALORE, SATURDAY, 31st JULY 1976
(SHRAVANA 9, SAKA ERA 1898).

No. 3667

LAW AND PARLIAMENTARY AFFAIRS SECRETARIAT

Notification No. LAW 61 LGN 76

Bangalore, dated the 31st July 1976.

Ordered that the Karnataka Appellate Tribunal (Amendment) Ordinance, 1976 promulgated by the Governor of Karnataka in the Twenty-seventh Year of the Republic of India, be published as Karnataka Ordinance No. 17 of 1976 in the *Karnataka Gazette* for general information.

KARNATAKA ORDINANCE No. 17 OF 1976

The Karnataka Appellate Tribunal (Amendment) Ordinance, 1976

(*Promulgated by the Governor of Karnataka in the Twenty seventh Year of the Republic of India and first published in the* **Karnataka Gazette** *Extraordinary on the Thirty-first day of July 1976*).

An Ordinance to amend the Karnataka Appellate Tribunal Act, 1976.

WHEREAS the Karnataka Legislative Assembly is not in session and only the Karnataka Legislative Council is in session and the Governor of Karnataka is satisfied that circumstances exist which render it necessary for him to take immediate action to amend the Karnataka Appellate Tribunal Act, 1976 (Karnataka Act 10 of 1976) ;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution of India, the Governor of Karnataka is pleased to promulgate the following Ordinance, namely :—

1. Short title and commencement.—(1) This Ordinance may be called the Karnataka Appellate Tribunal (Amendment) Ordinance, 1976.

(2) It shall come into force at once.

2. Amendment of section 3.—In section 3 of the Karnataka Appellate Tribunal Act, 1976 (Karnataka Act 10 of 1976) (hereinafter referred to as the principal Act),—

(i) in sub-section (2), for the word "six", the word "eight" shall be substituted ;

(ii) for sub-section (3), the following sub-section shall be substituted, namely,—

"(3) The Chairman shall be an officer not below the rank of a Divisional Commissioner and of the remaining members, at least two shall be District Judges, one shall be an officer of the Commercial Taxes Department not below the rank of a Deputy Commissioner of Commercial Taxes (hereinafter referred to as the Commercial Taxes member), one shall be an officer of the Department of Co-operation not below the rank of a Joint Registrar of Co-operative

Societies (hereinafter referred to as the Co-operation member) and the rest shall be officers not below the rank of a Deputy Commissioner of a District, having administrative experience".

3. Amendment of section 6.—In section 6 of the principal Act,—

(*i*) in sub-section (3),—

(*a*) for sub-clause (ii) of clause (*a*), the following sub-clause shall be substituted, namely,—

"(ii) the Co-operation member ;";

(*b*) for sub-clause (ii) of clause (*b*), the following sub-clause shall be substituted, namely,—

"(ii) the Commercial Taxes member ;";

(*ii*) sub-section (4) shall be omitted ;

(*iii*) for the proviso to sub-section (5), the following proviso shall be substituted, namely :—

"Provided that where the Bench hearing the appeal or application is composed of two members and the members composing the Bench differ in opinion, they shall place the papers of the case before the Chairman for the constitution of a full Bench under section 7."

4. Insertion of new section 8A.—After section 8 of the principal Act, the following section shall be inserted namely,—

"**8A. Revision by the High Court in certain cases.**—(1) Against an order of the Tribunal in any matter arising under the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), either party may within sixty days from the communication of the order prefer a petition to the High Court on the ground that the Tribunal has failed to decide or decided erroneously any question of law :

Provided that the High Court may for sufficient cause shown, admit a petition after the said period of sixty days.

(2) The petition shall be in such form and verified in such manner as may be prescribed and shall when it is preferred by any person other than the State Government or an officer empowered by it, be accompanied by a fee of one hundred rupees.

(3) If the High Court considers that there is no sufficient ground for interfering, it may dismiss the petition summarily :

Provided that no petition shall be so dismissed unless the petitioner has had a reasonable opportunity of being heard in support thereof.

(4) (*a*) If the High Court does not dismiss the petition summarily it shall, after giving both the parties to the petition a reasonable opportunity of being heard, determine the question or questions of law raised and either reverse, affirm or amend the order against which the petition was preferred or remit the matter to the Tribunal with the opinion of the High Court on the question or questions of law raised or pass such other order in relation to the matter as the High Court thinks fit.

(*b*) Where the High Court remits the matter to the Tribunal under clause (*a*) with its opinion on questions of law raised, the latter shall amend the order passed by it in conformity with such opinion.

(5) Before passing an order under sub-section (4) the High Court may, if it considers necessary so to do, remit the petition to the Tribunal and direct it to return the petition with its finding on any specific question or issue.

(6) Notwithstanding that a petition has been preferred under sub-section (1), the tax shall be paid in accordance with the assessment made in the case :

Provided that if as a result of the petition, any change becomes necessary in such assessment, the High Court may authorise the assessing authority to amend the assessment and the assessing authority shall amend the

assessment accordingly and thereupon the amount overpaid by the assessee shall be refunded to him without interest or the additional amount of tax due from him shall be collected in accordance with the provisions of the Karnataka Sales Tax Act, 1957 as the case may be.

(7) (*a*) The High Court may, on the application of either party to the petition, review any order passed by it under sub-section (4) on the basis of facts which were not before it when it passed the order.

(*b*) The application for review shall be preferred within such time and in such manner as may be prescribed, and shall, where it is preferred by any person other than an officer empowered by the State Government, be accompanied by a fee of one hundred rupees.

(8) With a view to rectifying any mistake apparent from the record, the High Court may, at any time, within five years from the date of the order passed by it under sub-section (4) amend such order :

Provided that no order under this sub-section shall be made without giving both parties affected by the order a reasonable opportunity of being heard.

(9) In respect of every petition preferred under sub-section (1) or (7), the costs shall be in the discretion of the High Court."

5. **Amendment of section 9.**—In section 9 of the principal Act, for the word and figure "section 8", the words, figures and letter "section 8 and 8A" shall be substituted.

6. **Insertion of new section 11A.**—After section 11 of the principal Act, the following section shall be inserted, namely,—

"**11A. The Tribunal to have certain powers of a Civil Court.**—For the purpose of proceedings under this Act, the Tribunal shall have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908

(Central Act 5 of 1908) in respect of the following matters, namely,—

(*a*) summoning and enforcing attendance of any person and examining him on oath ;

(*b*) requiring the discovery and production of any document or any other material which is prodeceable as evidence ;

(*c*) requisitioning any public record or copy thereof from any court or office ;

(*d*) issuing commissions for the examination of witnesses or documents ;

(*e*) such other matters as may be prescribed.".

7. **Amendment of section 14.**—In section 14 of the principal Act, in sub-section (2), clause (*b*) shall be omitted.

8. **Saving.**—Any petition preferred to the High Court under section 23 of the Karnataka Sales Tax Act, 1957 and pending in the High Court immediately before the commencement of this Ordinance shall be deemed to be a petition preferred under the Karnataka Appellate Tribunal Act, 1976 as amended by this Ordinance and shall be disposed of accordingly.

UMA SHANKAR DIKSHIT,
Governor of Karnataka.

By Order and in the name of the Governor of Karnataka,

M. L. RAMASWAMI,
Draftsman and Ex-Officio Joint Secretary to Government,
Department of Law and Parliamentary Affairs.

Printed by the Director of Printing, Sty. & Publications at the Govt. Press, B'lore.